U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 32600739

Date: JULY 24, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a doctor of traditional Chinese medicine, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners in this category must demonstrate their receipt of "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Nebraska Service Center denied the petition. The Director found that the Petitioner – who had to meet at least three of ten initial evidentiary requirements – did not satisfy any of them. On appeal, the Petitioner contends that the Director overlooked or misanalysed evidence of his:

- Membership in associations requiring outstanding achievements;
- Participation as a judge of others' work in the field;
- Original contributions of major significance in the field; and
- Commandment of a high salary or other significantly high remuneration in the field.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has met the requisite number of initial evidentiary criteria. We will therefore withdraw the Director's contrary decision and remand the matter for a final merits determination and entry of a new decision consistent with the following analysis.

## I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Evidence must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).[1]

If a petitioner meets either of the evidentiary criteria above, USCIS must make a final merits determination as to whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

## II. ANALYSIS

The record shows that the Petitioner, a Chinese native and citizen, worked as a pharmaceutical technician, founded a consulting business, and learned traditional Chinese medicine before establishing his own clinic in 2018. He then developed a unique treatment for liver ascites and menstrual pain, and created a specialized "Tuina" massage technique for juvenile nearsightedness. More recently, he has established chronic disease management and youth vision care centers in China and lectured in that country and Hong Kong on his therapies.

The Petitioner seeks to come to the United States to establish Chinese medicine clinics in the [redacted] California area. He states that he will treat patients with the low-cost, painless therapies he has developed and train others in their applications.

The record does not demonstrate – nor does the Petitioner claim – his receipt of a major, international award. He must therefore meet at least three of the ten initial evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x).

The Director found that the Petitioner did not meet evidentiary requirements for his:

- Membership in associations requiring outstanding achievements;
- Participation as a judge of others' work in the field;
- Original contributions of major significance in the field;
- Performance in a leading or critical role for organizations with distinguished reputations; or
- Commandment of a high salary or other significantly high remuneration in the field.

8 C.F.R. § 204.5(h)(3)(ii, iv, v, viii, ix). Except for performance in a leading or critical role, the Petitioner contends on appeal that he meets the evidentiary criteria the Director found lacking.[2]

[1] If an evidentiary standard does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

[2] On appeal, the Petitioner does not specifically assert that he met the criterion for evidence of his performance in a leading or critical role for organizations with distinguished reputations, or that the Director erred in finding the requirement criterion unsatisfied. *See* 8 C.F.R. § 204.5(h)(3)(viii). We therefore consider the issue to be "waived." *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

When adjudicating initial evidentiary requirements, USCIS determines whether a petitioner's proof "objectively meets the parameters of the regulatory description that applies to that type of evidence." 6 *USCIS Policy Manual* F.(2)(B)(1). The Agency may not "unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5." *Kazarian*, 596 F.3d at 1121.

A. Original Contributions of Major Significance

To meet this criterion, a petitioner must submit "[e]vidence of the [noncitizen]'s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v).

When adjudicating this requirement, USCIS first determines whether beneficiaries have made original contributions in their fields. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). If so, the Agency then determines whether the original contributions are of major significance in the fields. *Id.*

The Petitioner submitted documentation that he copyrighted his treatments for liver ascites/menstrual pain and juvenile nearsightedness in China and licensed designated Chinese medical clinics and institutions to provide these therapies. The Director, however, found that:

> the evidence appears to indicate that the [therapies] are being used in China, not more widely by the entire field. The evidence does not indicate that the petitioner's work is being widely utilized by physicians in the field, reaching far beyond the petitioner's employer, clients, or customers.

The record, however, indicates that traditional Chinese medicine, while used around the world, remains most popular in its country of origin. We therefore do not find the geographical licensing limitation of the Petitioner's therapies to China to substantially undermine their significance in the field.

As the Petitioner argues, USCIS policy supports his evidence under this criteria. Proof of original contributions of major significance can include "[p]atents or licenses deriving from the person's work or evidence of commercial use of the person's work." 6 *USCIS Policy Manual* F.(2)(B)(1). Further, "evidence that the person developed a patented technology that has attracted significant attention or commercialization may establish the significance of the person's original contribution to the field." *Id.*

The Petitioner's copyrighting of his therapies demonstrates their originality. Also, not only do the therapies provide him with a significant annual salary of 1.2 million yuan – or about $165,948 – at his own clinic, but the record shows that he has also licensed his therapies to other practitioners in the field, generating another annual 1.6 million yuan – or about $221,263. The commercialization of his therapies show significance in the field. Further, he submitted letters from experts in the traditional Chinese medicine field describing his therapies as "distinguished," "remarkable," "innovative," and "important."

Thus, contrary to the Director's finding, the Petitioner has met the evidentiary requirement at 8 C.F.R. § 204.5(h)(3)(v) by submitting proof of his original contributions of major significance in his field.

B. Participation as a Judge

This criterion requires "[e]vidence of the [noncitizen]'s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner submitted documentation from the [redacted] indicating his participation as an "expert judge" evaluating three projects involving traditional Chinese medicine therapies in 2021 and 2022. The Director, however, found insufficient evidence of the evaluations' relevance to the Petitioner's field, how he was selected to judge, or the level of acclaim for his activities. The Director stated:

> [T]here is no evidence showing the names of the participants evaluated by the petitioner, their level of expertise, the specific competitive categories he judged, and the significance and magnitude of the competition. Without independent objective evidence of how this relates to the petitioner's field of expertise and that the activities were consistent with sustained national or international acclaim at the very top level of his field, the evidence contains no probative value.

The Director imposed evidentiary requirements beyond those stated in the regulatory criterion. The criterion does not require evidence of the basis of the Petitioner's selection as a judge, the level of acclaim resulting from his participation, the participants' names, or the evaluations' significance and magnitude. *See Kazarian*, 596 F.3d at 1121 (barring USCIS from "unilaterally impos[ing] novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5)".

As the Director noted, the criterion requires the judged work to be in the Petitioner's "same or an allied field." *See* 8 C.F.R. § 204.5(h)(3)(iv). But contrary to the Director's finding, the record demonstrates that the projects the Petitioner evaluated involved the traditional Chinese medicine field. The [redacted] association's invitation letters stated the projects' titles, which referenced traditional Chinese therapies such as Tuina and moxibustion.[3] The Petitioner also provided biographical information about the projects' leaders, who included chief and attending physicians at traditional Chinese medicine hospitals. Thus, the record established the evaluations' relevance to the Petitioner's field.

Consistent with 8 C.F.R. § 204.5(h)(3)(iv), the Petitioner submitted evidence of his participation as a judge of the work of others in his same field. We will therefore withdraw the Director's contrary finding.

[3] Moxibustion is a type of traditional Chinese medicine. It involves burning moxa, a cone or stick made of ground mug wort leaves, on or near a body's meridians and acupuncture points. Healthline, "What Is Moxibustion?" www.healthline.com/health.

C. High Salary or Remuneration

This criterion requires "[e]vidence that the [noncitizen] has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner submitted a certificate from the clinic he founded and other documentation of his gross income from October 2022 to October 2023. He also provided copies of two 2023 online salary surveys regarding Chinese doctors of both modern and traditional medicine.

The Director noted that the Petitioner earned some of his income from his copyrighted therapies and by working as a visiting professor. But, considering only his role as a doctor of traditional Chinese medicine at his clinic, the evidence shows that he earned 1.2 million yuan over the one-year period. One online survey shows that the average Chinese doctor of modern medicine earns 690,481 yuan a year and that senior doctors with at least eight years' experience average 903,124 yuan a year. The other survey shows that annual salaries of Chinese doctors of traditional Chinese medicine range from 40,000 to 360,000 yuan. Thus, measured against Chinese doctors of both modern and traditional medicine, the record indicates that the Petitioner has commanded a high salary.

The Director found that the Petitioner's income certificate from his clinic was "not necessarily evidence of actual earned wages" but rather represented "the anticipation of earnings." The record, however, does not support the Director's finding. The income certificate states the Petitioner's earnings "for the previous year" (October 2022 to October 2023). Thus, the certificate does not represent "the anticipation of earnings."

Also, as the Petitioner argues on appeal:

> USCIS does not interpret the phrase "has commanded" [in 8 C.F.R. § 204.5(h)(3)(ix)] to mean that the person must have already earned such salary or remuneration in order to meet the criterion. Rather, a credible contract or job offer showing prospective salary or remuneration may establish that the person has been able to command such compensation.

6 *USCIS Policy Manual* F.(2)(B)(1). Thus, the Director also erred by stating that evidence of high salary or remuneration must include proof of "actual earned wages."

The Petitioner submitted evidence of his commandment of a high salary in relation to others in the Chinese medicine field. We will therefore withdraw the Director's contrary finding.

D. Membership in Associations Requiring Outstanding Achievements

The Petitioner has demonstrated his satisfaction of three initial evidentiary requirements. We therefore need not consider his appellate arguments that, under 8 C.F.R. 204.5(h)(3)(ii), he also provided proof of his membership in associations that require outstanding achievements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA

2015) (declining to reach alternate issues on appeal where an applicant did not otherwise meet their burden of proof).

USCIS must now conduct a final merits determination on the Petitioner's request for classification as a noncitizen of extraordinary ability. *See Kazarian*, 596 F.3d at 1119-20; *see generally* 6 *USCIS Policy Manual* F.(2)(B). The Director did not make a final merits determination. Rather than conduct such a finding in the first instance, we will remand the matter.

On remand, the Director must decide whether the Petitioner has sustained national or international acclaim and his achievements have been recognized in his field, identifying him as one of that small percentage who has risen to the field's very top. *See* 6 *USCIS Policy Manual* F.(2)(B)(2). The Director should consider any potentially relevant evidence of record, even if it does not fit one of the regulatory criteria or was not presented as comparable evidence. *Id.* The Director should base the petition's approval or denial on the type and quality of evidence submitted. *Id.*

## III. CONCLUSION

The Petitioner has met at least three of the requested category's ten initial evidentiary criteria. USCIS must now conduct a final merits decision.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.